

## **REMARKS**

Applicant, by the amendments presented above, has made a concerted effort to present claims which more clearly define over the prior art of record, and thus to place this case in condition for allowance.

Currently, claims 1-13 and 20-25 are pending.

### ***Allowable Subject Matter***

Applicant acknowledges with appreciation that the Examiner indicated that claims 11 and 12/11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 U.S.C. §103***

Claims 1-10 and 12/10 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Barsky in view of Moll et al. and further in view of United States Patent No. 5,817,002 to Donnelly et al. Reconsideration and withdrawal of the rejection in view of the amendments and the remarks made herein is requested.

Claim 1 has been amended to specify “an upper cover configured to extend over said surface . . . at least one radiant heater integrated with, supported by, connected to or otherwise in immediate proximity to said cover . . . such that in use the skin temperature of said infant is regulated substantially within a predetermined range whilst enclosed by said cover in said visibly opaque state”. Applicant submits that none of Barsky, Moll or Donnelly, or the combination thereof, discloses or suggests an infant heater with a radiant element as part of

the cover regulating an infant's skin temperature and a cover configurable to a substantially visually opaque state as amended claim 1.

Barsky discloses an overhead infrared heater and a draft shield assembly, which can be completely open or completely closed. The overhead heater radiates heat through the draft shield to the infant on the mattress.

Donnelly discloses two configurations, a first configuration with the hood down in which it acts as an incubator where the radiant heater is not used, and a second configuration with the hood in its uppermost position whereby the system operates primarily with an air curtain to provide a heated air environment for the infant with the radiant heater providing any additional required heat. Moll is similar to Donnelly and discloses either an enclosed environment without radiant heating, or a radiant warmer without a cover.

Therefore, Applicant submits that the prior art is primarily directed at an overhead infrared heater. Applicant submits that if the prior art were combined by one of ordinary skill in the art, the following two combinations would result: 1) an enclosure of Figure 6 of Donnelly with the overhead infrared heater of Figure 1 of Barsky, or 2) an enclosure of Figure 4 of Barsky with the infrared heater of Figure 4 in its raised canopy configuration. In either combination, Applicant submits that the upper radiant heater is *not* integrated with, supported by, connected or otherwise in immediate proximity to the upper cover as is specified in amended claim 1.

Furthermore, amended claim 1 specifies “an upper cover configured to extend over said surface and including a substantial portion which may be configured to at least a substantially visually opaque state or a substantially visually transparent state”. Applicant submits that this prior art combination of an external radiant heater above an enclosure is not compatible with an opaque upper cover. Such a prior art combination with the cover in an

opaque state would result in the radiation not penetrating the cover, the infant not having its skin temperature regulated by the upper radiant heater; and the opaque cover of the prior art heating up, to possibly dangerous temperatures.

Applicant submits that it is the teaching of Donnelly that the liquid crystal light shutter only provides selective darkening of the infant sleep surface in the incubator mode when the radiant heater is not in use. When the radiant heater is used, the canopy is raised and the liquid crystal light shutter is not in use. Therefore, the combination of Barsky, Moll and Donnelly does not provide for a substantially opaque upper cover with a radiant heater regulating the infant's skin temperature as is specified in amended claim 1.

Therefore, Applicant submits that amended claim 1 is allowable over the prior art. Reconsideration and allowance of amended claim 1 is requested.

Claim 2-10 and 12/10 are dependent upon amended claim 1 which Applicant submits is in condition for allowance. Reconsideration and allowance of claims 2-10 and 12/10 is requested.

Claims 20-25 were rejected under 35 U.S.C. §103 as being unpatentable over United States Patent No. 5,649,896 to Barsky in view of United States Patent No. 5,817,003 to Moll et al. Reconsideration and withdrawal of the rejection in view of the amendments and the remarks made herein is requested.

Claim 20 has been amended to specify "an upper cover configured to extend over said surface, at least one radiant heater integrated with, supported by, connected to or otherwise in immediate proximity to said cover . . . said at least one radiant heater such that in use the skin temperature of said infant is regulated substantially within a predetermined range whilst enclosed by said cover, and energise said humidifier to substantially prevent insensible water

loss from said infant”. Applicant submits that Barsky and/or Moll, alone or in combination, discloses or suggests an infant heater with a radiant element as part of the cover regulating an infant’s skin temperature and controlled humidification to prevent insensible water loss as is specified in amended claim 20.

Barsky discloses an overhead infrared heater and a draft shield assembly, which can be completely open or completely closed. The overhead heater radiates heat through the draft shield to the infant on the mattress.

Moll discloses either an enclosed environment without radiant heating, or a radiant warmer without a cover.

Applicant submits that the prior art is primarily directed at an overhead infrared heater and the prior art does not disclose or suggest an upper radiant heater is integrated with, supported by, connected or otherwise in immediate proximity to the upper cover as is specified in amended claim 20.

Therefore, Applicant submits that amended claim 20 is allowable over the prior art. Reconsideration and allowance of amended claim 20 is requested.

Claim 21-25 are dependent upon amended claim 20 which Applicant submits is in condition for allowance. Reconsideration and allowance of claims 21-25 is requested.

### ***Claim 13***

The Examiner did not address claim 13 in the Office Action or on the Office Action Summary (other than to say it is pending on the Office Action Summary). Applicant requests an indication as to the status of claim 13.

In view of the above Amendments and Remarks, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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